IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8123 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDULRASID @ KALU MOHAMMEDBHAI MANIYAR

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR UDAY BHATT, Ld.AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/10/2000

ORAL JUDGEMENT

The petitioner-detenue has, by filing this writ petition underArticle 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 30th June, 2000 (Annexure - A) passed by respondent no.2 with respect to detenu - petitioner in exercise of his powers conferred on him under section 3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short "the act").

2. As per the papers of grounds of detention, the petitioner-detenue is "a bootlegger" within the meaning of section 2(b) of the Act, and that activities of the petitioner are prejudicial to the maintenance of the public order.

3. Before passing an order of detention, for arriving at a subjective satisfaction, the detaining authority has placed reliance on 7 (seven) Cases against the petitioner - detenu and that 7 (seven) Cases are lodged for offences punishable under the provisions of The Bombay Prohibition Act, 1949. The detaining authority has also placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. As per the papers, the detaining authority verified the statements of two witnesses on 21st June, 2000 and the order of detention dated 30th June, 2000 came to be passed against the detenue which is challenged in this writ petition.

4. Though rule has been served upon each respondent, none of the respondents has filed affidavit-in-reply in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Mr.M. M. Tirmizi, learned advocate for the petitioner has argued that in this case, the detaining authority has placed reliance on statments of two anonymous witnesses. That statements were recorded on 28th June, 2000 and both were verified by detaining authority on 29th June, 2000 and on the very next day, the detaining authority has passed an order of detention. Mr.Tirmizi, learned advocate for the petitioner has also argued that the claim of privilege under section 9(2) of the Act is not genuine claim. The detaining authority had no time to verify the correctness and genuineness of the statements of the two witnesses. Mr.Tirmizi, learned advocate for the petitioner has cited an authority of Kalidas Chandubhai Kahar V/s. State of Gujarat and

Others, reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under section 9(2) of the Act. When the detaining authority had no time to verify the statements with regard to correctness and genuineness of facts stated therein, the claim of the detaining authority is not genuine and, therefore, the detaining authority has contravened the provisions of Article 22 of the Constitution of India and thus, the order of detention passed by the detaining authority is bad in law and illegal and it requires to be set aside.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 30th June, 2000 passed by respondent no.2 with respect to detenu is quashed and set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta,J.)

(vrpanchal)*